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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Toribio Sombra-Orduno,) CASE NO. 05-CV-0602-TUC-FRZ
10 Petitioner,) 04-CR-1837-TUC-FRZ
11 vs.)
12 United States of America,)
13 Respondent.)
14 _____)

15 **ORDER**

16 Petitioner has filed a “Motion to Vacate, Set Aside, or Correct Sentence by a Person
17 in Federal Custody (28 U.S.C. § 2255).”

18 Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States
19 District Courts provides, in relevant part, that

20 [i]f it plainly appears from the motion, any attached exhibits,
21 and the record of prior proceedings that the moving party is not
22 entitled to relief, the judge must dismiss the motion and direct
the clerk to notify the moving party.

23 28 U.S.C. foll. § 2255.

24 **Background**

25 Pursuant to a plea agreement, Petitioner entered a plea of guilty to Count One of the
26 Indictment, which charged him conspiracy to possess with the intent to distribute
27 approximately 279.5 kilograms of marijuana. Count Two of the Indictment, which charged
28 him with possession with the intent to distribute marijuana, was dismissed at sentencing.

1 Pursuant to the plea agreement, Petitioner waived "any right to collaterally attack [his]
2 conviction and sentence under Title 28, United States Code, Section 2255." In the plea
3 agreement, the parties stipulated to a thirty-six month sentence. The Court imposed a thirty-
4 six month sentence.

5 **Discussion**

6 In his motion, Petitioner requests that the Court "look over on [sic] my case to see if
7 [I] am available for a little less time." In addition to the fact that Petitioner waived "any right
8 to collaterally attack [his] conviction and sentence under Title 28, United States Code,
9 Section 2255," Petitioner has provided no grounds for a reduction of his sentence. Nor is one
10 apparent to the Court.

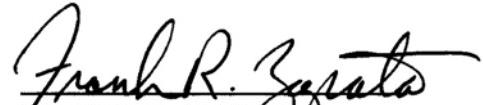
11 **Conclusion**

12 Accordingly,

13 **IT IS ORDERED** that Petitioner's § 2255 Motion (U.S.D.C. document #52 in
14 CR-04-1837-TUC-FRZ) is **DENIED** and this case (CV-05-602-TUC-FRZ) is **DISMISSED**.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy
16 of the Motion and this Order on Respondent and **SHALL SERVE** a copy of this Order on
17 Petitioner.

18 DATED this 14th day of October, 2005.

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FRANK R. ZAPATA
United States District Judge
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